DOCKET NO.: FBT-CV-22-5049450 S	:	SUPERIOR COURT
MARCUS BROWN	:	J. D. OF FAIRFIELD
V.	:	AT BRIDGEPORT
CHARLES D. CLEMONS, JR., ET AL.	:	OCTOBER 4, 2022

SUMMARY MEMORANDUM OF DECISION

STATEMENT OF THE CASE AND FINDINGS

This action was instituted on August 22, 2022 by Marcus Brown and involves the Democratic primary election for the office of State Representative for the 127th Assembly District held on August 9, 2022. This action was instituted pursuant to the provisions of General Statutes § 9-329a.[1] The candidates in the primary were the plaintiff, Marcus Brown, and the defendant John

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[1] General Statutes § 9-329a provides: "(a) Any (1) elector or candidate aggrieved by a ruling of an election official in connection with any primary held pursuant to (A) section 9-423, 9-425 or 9-464, or (B) a special act, (2) elector or candidate who alleges that there has been a mistake in the count of the votes cast at such primary, or (3) candidate in such a primary who alleges that he is aggrieved by a violation of any provision of sections 9-355, 9-357 to 9-361, inclusive, 9-364, 9-364a or 9-365 in the casting of absentee ballots at such primary, may bring his complaint to any judge of the Superior Court for appropriate action. In any action brought pursuant to the provisions of this section, the complainant shall file a certification attached to the complaint indicating that a copy of the complaint has been sent by first-class mail or delivered to the State Elections Enforcement Commission. If such complaint is made prior to such primary such judge shall proceed expeditiously to render judgment on the complaint and shall cause notice of the hearing to be given to the Secretary of the State and the State Elections Enforcement Commission. If such complaint is made subsequent to such primary it shall be brought, not later than fourteen days after such primary, or if such complaint is brought in response to the manual tabulation of paper ballots, described in section 9-320f, such complaint shall be brought, not later than seven days after the close of any such manual tabulation, to any judge of the Superior Court.

"(b) Such judge shall forthwith order a hearing to be held upon such complaint upon a day not more than five nor less than three days after the making of such order, and shall cause notice of not less than three days to be given to any candidate or candidates in any way directly affected by the decision upon such hearing, to such election official, to the Secretary of the State, the State Elections Enforcement Commission and to any other person or persons, whom such judge deems proper parties thereto, of the time and place of the hearing upon such complaint. Such judge shall, on the day fixed for such hearing, and without delay, proceed to hear the parties and determine the result. If, after hearing, sufficient reason is shown, such judge may order any voting tabulators to be unlocked or any ballot boxes to be opened and a recount of the votes cast, including absentee

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Hennessy. The other defendants in the case are, for the state of Connecticut: Mark Kohler, Secretary of the State; and the Elections Enforcement Commission; for the city of Bridgeport: Charles Clemons, Jr., Town Clerk; Patricia Howard, Democratic Registrar of Voters; and James Mullen, Head Moderator. The defendant city officials will be referred to as the city defendants.

According to the certified results of the primary held on August 9, 2022, a total of 1153 votes were counted, with Brown receiving 579 votes and Hennessy receiving 574 votes, representing a five vote win in Brown's favor. A statutory mandated recount or recanvass was held on August 16, 2022. According to the certified results of this recanvass, a total of 1133 votes were counted, with Brown receiving 566 votes and Hennessy receiving 567 votes, representing a one vote win in Hennessy's favor.

Brown instituted this action contesting the August 16, 2022 recanvass, and after this action was instituted, the parties executed a stipulation for a manual recount. On August 26, 2022, the court accepted this stipulation and ordered the manual recount. This manual recount was held on

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ballots, to be made. Such judge shall thereupon, if he finds any error in the ruling of the election official, any mistake in the count of the votes or any violation of said sections, certify the result of his finding or decision to the Secretary of the State before the tenth day following the conclusion of the hearing. Such judge may (1) determine the result of such primary; (2) order a change in the existing primary schedule; or (3) order a new primary if he finds that but for the error in the ruling of the election official, any mistake in the count of the votes or any violation of said sections, the result of such primary might have been different and he is unable to determine the result of such primary.

"(c) The certification by the judge of his finding or decision shall be final and conclusive upon all questions relating to errors in the ruling of such election official, to the correctness of such count, and, for the purposes of this section only, such alleged violations, and shall operate to correct any returns or certificates filed by the election officials, unless the same is appealed from as provided in section 9-325. In the event a new primary is held pursuant to such Superior Court order, the result of such new primary shall be final and conclusive unless a complaint is brought pursuant to this section. The clerk of the court shall forthwith transmit a copy of such findings and order to the Secretary of the State."

August 29, 2022. According to the certified results of this manual recount, a total of 1144 votes were counted, with Brown receiving 573 votes and Hennessy receiving 571 votes, representing a two vote win for Brown. Nine ballots that were misplaced and not counted in the first recanvass were located and counted in the manual recount ordered by the court.

In its August 26, 2022 order scheduling the manual recount, the court provided leave for the candidates to assert further claims as a result of this recount. As the candidate who lost the primary based on the manual recount, Hennessy filed a cross complaint dated August 31, 2022 based on various claims involving the casting of absentee ballots.[2] The court authorized the parties to engage in discovery and scheduled an evidentiary hearing regarding Hennessy's claims. The uncontroverted evidence relevant to the court's disposition of Hennessy's claims is as follows.

George Daniels testified that although he did not apply for an absentee ballot, he received one in the mail and voted by absentee ballot. He explained that the signature on the absentee ballot purportedly bearing his signature was not written by him and someone unknown to him signed this

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[2] Brown and the city defendants filed motions to dismiss Hennessy's cross complaint on the ground that the court lacked jurisdiction over Hennessy's complaint because it was not filed within fourteen days after the primary as provided under General Statutes § 9-329a (a). In denying these motions, the court explained that § 9-329a (a) concerns the initiation of the court's jurisdiction, whereas the court's authority to adjudicate Hennessy's cross complaint concerns the scope of the court's jurisdiction after this jurisdiction has been invoked:

"Once the court's jurisdiction has been invoked, the court has authority to consider all matters relevant and necessary for the disposition of the issues and disputes over which jurisdiction has been acquired. The question here is not whether the criteria to invoke the court's jurisdiction has been satisfied under § 9-329a (a), but what is the extent and scope of the court's authority under § 9-329a (b) once that jurisdiction has been acquired.

"Here, the plaintiff invoked the court's jurisdiction, and in the exercise of that jurisdiction, the court ordered a manual recount of the votes cast in the primary. The court rejects the plaintiff's arguments that the court's authority to approve or disapprove the court ordered recount is limited and narrow in the manner advanced by the plaintiff." Ruling on Request to Amend (articulating the order denying the motion to dismiss), September 23, 2022, #150.10.

absentee ballot application. Louis Jean-Pierre testified that he signed an absentee ballot application for his son, Sardou, without Sardou's knowledge. Sardou voted by absentee ballot. Mario Licona signed an absentee ballot application for his fiancée, Verushka Maldonado. Maldonado voted by absentee ballot. Eduardo Santiago's wife signed his absentee ballot application with his permission. Santiago voted by absentee ballot. There is no dispute that the failure of these voters to sign the applications for absentee ballots in order for them to receive the ballots and vote by absentee ballot violates General Statutes § 9-140 (a) (1).

On the basis of this evidence, the court makes the following findings. Because these four voters did not sign their applications for absentee ballots in accordance with § 9-140 (a) (1), they were not entitled to receive or acquire their ballots as provided under § 9-140 (a) (1). Because they were not entitled to the absentee ballots they received, the ballots they cast should be rejected and not counted. There is no evidence on which the court can conclude that these four ballots were not among the 1144 votes counted in favor of one of the two candidates as part of the court ordered manual recount, and therefore, the court must infer that these four ballots were among the 1144 votes that were so counted. Because Brown's margin of victory over Hennessy is two votes and the court finds that four votes must be invalidated, the court does not approve the results of the court ordered manual recount.

On the basis of these findings, the court further finds that as to the court ordered manual recount, there was a "mistake in the count of the votes" under General Statutes § 9-329a (b). The court also makes the following findings: that but for this mistake in the count of the votes, the result of the primary might have been different; and that the court is unable to determine the result of the primary.

Therefore, for these reasons and under the authority of § 9-329a (b) (3), the court hereby orders a new Democratic primary election for the office of State Representative for the 127th Assembly District. The clerk of court is directed to certify this decision to the Secretary of the State.

DISCUSSION

I

Section 9-320a (a) (2) gives the court jurisdiction to determine whether "there has been a mistake in the count of the votes cast" in the primary. This court has held a mistake in the count of the votes may "result from either the counting of votes which legally should *not* be counted or the failure to count ballots that legally *should* be counted." (Emphasis in original) *Lazar* v. *Ganim*, Superior Court, judicial district of Fairfield, Docket No. 19-6090047-S (November 1, 2019, *Stevens, J.*), aff'd, 334 Conn. 73, 220 A.3d 18 (2019). The court in *Lazar* also outlined the following law regarding the court's review and consideration of claims contesting absentee ballots.

"'Although § 9-329a allows for the invalidation of election results, [courts] have emphasized that such a measure should not be taken lightly. [*Keeley* v. *Ayala*, 328 Conn. 402 405-406, 179 A.3d 1249 (2018)]. Indeed, well-established precedent dictates that this court should be very cautious before exercising its statutory authority to vacate the results of a primary and to order a new one as requested by the [plaintiff] here.

'[U]nder our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and implement the will of the people. . . . The purpose of the election statutes is to ensure the true and most accurate count possible of the votes for the candidates in the election. . . . Those statutes rest on the bedrock principle that the purpose of the voting process is

to ascertain the intent of the voters. . . . In implementing that process, moreover, when an individual ballot is questioned, no voter is to be disfranchised on a doubtful construction, and statutes tending to limit the exercise of the ballot should be liberally construed in his or her favor. . . .

"'An election is essentially–and necessarily–a snapshot. . . . Moreover, that snapshot can never be duplicated. The campaign, the resources available for it, the totality of the electors who voted in it, and their motivations, inevitably will be different a second time around. Thus, when a court orders a *new* election, it is really ordering a *different* election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated election day. . . .

"'Consequently, all of the electors who voted at the first [election] have a powerful interest in the stability of that election because the ordering of a new and different election would result in *their* election day disfranchisement. The ordering of a new and different election in effect disfranchises all of those who voted at the first election because their validly cast votes no longer count, and the second election can never duplicate the complex combination of conditions under which they cast their ballots.' (Citations omitted; emphasis in original; internal quotation marks omitted.) [*Bortner* v. *Woodbridge*, 250 Conn. 241, 254-56, 736 A.2d 104 (1999)]

"FThe present case concerns questions arising from absentee balloting, which is 'a special type of voting procedure established by the legislature for those otherwise qualified voters who for one or more of the [statutorily] authorized reasons are unable to cast their ballots at the regular polling place.' *Wrinn* v. *Dunleavy*, 186 Conn. 125, 142, 440 A.2d 261 (1982); see also 26 Am. Jur. 2d 129, Elections § 333 (2014) ('[t]he procedures required by the absentee voting laws serve the

purposes of enfranchising qualified voters, preserving ballot secrecy, preventing fraud, and achieving a reasonably prompt determination of election results'). The Supreme Court has previously recognized 'that there is considerable room for fraud in absentee [ballot] voting and that a failure to comply with the regulatory provisions governing absentee [ballot] voting increases the opportunity for fraud. . . . At the same time, [i]f there is to be [disen]franchisement, it should be because the legislature has seen fit to require it in the interest of an honest suffrage, and has expressed that requirement in unmistakable language.' (Citations omitted; internal quotation marks omitted.) *Keeley* v. *Ayala*, supra, 328 Conn. 407. . . .

'When examining whether an error or mistake adversely affected an election, the Supreme Court has held that a court may consider the number of votes called into question. See *Keeley* v. *Ayala*, supra, 328 Conn. 428. For example, in *Keeley*, "[b]ecause the number of absentee ballots properly invalidated by the trial court is greater than [the winning candidate's] eighteen vote margin of victory over the plaintiff . . . the court correctly determined that the results of the . . . special primary had been placed seriously in doubt, thereby necessitating that a new special primary be conducted.' Id. . . .

"Under § 9-329a, the court's review of the election violations as claimed by the [plaintiff] requires the court to consider two factors. The court must first determine whether any errors caused "a mistake in the count of the votes cast," and if so, the court must next determine whether a finding can be made that "but for . . . any mistake in the count of the votes . . . the result of [the] primary might have been different." General Statutes § 9-329a (a) (2) and (b). These considerations, in turn, operate to delineate the [plaintiff's] burden of proof. The [plaintiff] must prove by a fair preponderance of the evidence that: "(1) there were . . . substantial mistakes in the

count of the votes; and (2) as a result of those errors or mistakes, the reliability of the result of the election, as determined by the election officials, is seriously in doubt." *Bortner* v. *Woodbridge*, supra, 250 Conn. 263. To meet this burden of proof, the plaintiffs must prove mistakes in the count of the vote that are substantial or significant. Id. The electoral process should not be disturbed by the drastic remedy of a court ordered re-election based on mistakes that are minor or ministerial." *Lazar* v. *Ganim*, supra, Superior Court, judicial district of Fairfield, Docket No. 19-6090047-S.

II

As previously stated, Hennessy's complaint concerns votes cast by absentee ballots. Connecticut has not established an open or unconditional process for voting by absentee ballot. Under General Statutes § 9-135 (a), an elector can only vote by absentee ballot if the person "is unable to appear at such [elector's] polling place on the day of such primary [or] election" because of one of six reasons specifically delineated in the statute.[3]

Hennessy's specific complaint is about four electors who voted by absentee ballots, but who failed to sign the applications to receive the absentee ballots in accordance with the provisions of General Statutes § 9-140 (a).[4] Section 9-140 (a) requires that an absentee ballot "application shall

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[3] Section 9-135 (a) provides the following: "Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if such elector or person is unable to appear at such elector's or person's polling place on the day of such primary, election or referendum for any of the following reasons: (1) Such elector's or person's active service with the armed forces of the United States; (2) such elector's or person's absence from the town of such elector's or person's voting residence; (3) sickness; (4) physical disability; (5) the tenets of such elector's or person's religion forbid secular activity on the day of such primary, election or referendum; or (6) the required performance of such elector's or person's duties as a primary, election or referendum official, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than such elector's or person's own during all of the hours of voting at such primary, election or referendum."

[4] Section 9-140 (a) (1) provides the following: "Except as provided in subsection (b) of this section, application for an absentee ballot shall be made to the clerk of the municipality in which

be signed by the applicant under penalties of false statement . . ." There is no dispute that these four ballots do not comply with § 9-140 because the ballots were not signed by the voting electors under penalties of false statement.[5]

The signing of the application for an absentee ballot under penalty of false statement is not a perfunctory function, but is a mandatory and material obligation on the part of the applicant precisely because this affirmative act requires the elector to attest that he or she is *eligible to vote by absentee ballot*. The six situations provided under § 9-135 (a) under which absentee voting is

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the applicant is eligible to vote or has applied for such eligibility. Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or referendum question. The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application. *The application shall be signed by the applicant under the penalties of false statement in absentee balloting on* (A) the form prescribed by the Secretary of the State pursuant to section 9-139a, (B) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (C) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. *Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature.* If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application." (Emphasis added.)

[5]Hennessey is also correct that the four contested ballots were cast in violation of General Statutes § 9-140b (a), which provides, in relevant part, that "an absentee ballot shall be cast at a primary, election or referendum only if: (1) mailed by (A) the ballot applicant . . . [or] (2) it is returned by the applicant in person to the clerk." Because the four electors at issue did not sign the applications for the absentee ballots they cannot actually be "applicants" who can either mail or return the ballots within the meaning of this statute.

authorized are expressly stated in the application and the applicant by his or her signature must attest that one or more of them apply.[6] The importance of the applicant's signature is also evidenced by the statute providing that an "authorized agent" may sign for the "absentee ballot applicant who is unable to write." General Statutes § 9-140 (a).

In short, under the statutory scheme, an absentee ballot may be cast only under statutorily defined circumstances. An elector may apply for an absentee ballot by signing an application under penalty of false statement attesting that she is eligible to *receive* an absentee ballot because she is *eligible* to vote by absentee ballot. If no such attestation is made by the applicant herself, then there is no verification of the applicant's eligibility to vote by absentee ballot as contemplated by the statutory scheme. The seriousness of this issue is further compounded if the elector receives an absentee ballot in the mail under circumstances where the application is signed without the elector's knowledge by someone the elector may or may not know, which is a situation evidenced in this case. Under such circumstances, the elector may fairly assume that the ballot was received by an election official and may proceed to return the ballot without any consideration about his eligibility to cast the ballot.

The question whether an absentee ballot should be rejected because the elector did not sign

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[6] As indicated in exhibit 45, the absentee ballot application further states that "All applicants must fill out sections I, II, III, IV, VI." Section VI of the application provides the "Applicant's Declaration" and states that "I declare, under the penalties of false statement in absentee balloting, that the above statements are true and correct, and that I am the applicant named above. (*Sign your legal name in full. If your are unable to write, you may authorize some on to write your name and the date in the spaces provided followed by the word 'by' and the signature of the authorized person. Such person must also complete section VII below.*)" (Emphasis in original.) The application also explains that "penalties for false statements" made in the application constitute a class D felony, for which a sentence of imprisonment and fine may be imposed. Consequently, the need and obligation for the applicant to personally sign the application is clearly explained in the application.

the absentee ballot application has not been squarely addressed in Connecticut and is a matter of first impression. The most analogous Connecticut case is this court's opinion in *Lazar* where the court expressed the view that absentee ballots should not be counted when cast by electors who were not eligible to vote by absentee ballot. *Lazar* v. *Ganim*, Superior Court, supra, pp. 6-7.[7] On the other hand, courts in other jurisdictions have considered this question and hold that the failure of an applicant to sign his absentee ballot application warrants the rejection of this elector's ballot. *Taylor* v. *Cox*, 710 So. 2d 406, 408 (Ala. 1998) (absentee ballots issued to voters who did not themselves sign application forms were invalid); *Appeal of Orsatti*, 143 Pa. Commw. 12, 16, 598 A.2d 1341, 1343 (1991) (votes of electors should be voided when their signatures on their applications for absentee ballots were forged); *Hardeman* v. *Thomas*, 208 Cal. App. 3d 153, 197, 256 Cal. Rptr 148 (1989) (absentee ballots invalidated because "voters did not sign their absentee ballot envelopes and/or application for absentee ballots"); *Phillips* v. *Melton*, 222 Ark. 162, 155, 257 S.W.2d 931 (1953) (voter's ballot invalidated when voter's application for absentee ballot signed by daughter).

The rejection of the four ballots at issue is a ruling that this court initially rejected, but upon reconsideration, must now reluctantly accept. As previously discussed, disenfranchisement should

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[7] The plaintiffs in *Lazar* raised numerous grounds contesting absentee ballots, including arguments directed to the signing of absentee ballot applications. The court, however, declined to make specific findings regarding the alleged deficiencies and did not order the rejection of any ballots because the plaintiffs failed to prove that the problems, assuming they were true, were sufficient to show that "the result of the primary as a whole or as to every candidate might have been different." *Lazar* v. *Ganim*, Superior Court, supra, p. 15. See also, *Cohen* v. *Rossi*, Superior Court, judicial district of New Haven, Docket No. 21-6119017-S (June 24, 2022, *Wilson, J.*) (when conditions for voting by absentee ballot are waived by special act, elector's failure to identify a condition on absentee ballot application not a basis for rejecting elector's ballot).

not be taken lightly and should not occur unless a violation involves a requirement that the legislature has expressed in unmistakable language. Here, the signature requirement for absentee ballot applications is an unmistakable, mandatory, statutory obligation imposed on electors seeking to vote by absentee ballot. These mandatory requirements created by the legislature are important precisely because absentee balloting is a special type of voting procedure and the right to vote by absentee ballot is a special privilege granted by the legislature. The problems presented in this action are not situations involving substantial compliance because there has been no compliance whatsoever with the signature requirement of § 9-140. Furthermore, among the purposes of the statutory scheme governing absentee voting are to ensure fairness and prevent fraud in the voting process. The court agrees with Hennessy that "the risk of absentee ballots coming to voters who did not ask for them is too obvious for extended discussion. It increases the opportunities for fraud and unfairly tilts the election contest against those who followed the rules and signed there applications as the law requires." Defendant and Cross-Plaintiff John Hennessy's Post-Trial Memorandum, p. 12.

The City defendants and Brown argue that the four ballots should not be rejected because the voters' failure to comply with the signature mandate of § 9-140 (a) was innocent and was done without any evidence of violating § 9-359a, which creates a criminal offense for making a false statement in an absentee ballot application. This argument is rejected because the signature mandate of § 9-140 (a) is a requirement directly imposed on the elector applying for the absentee ballot and because our Supreme Court has held that ballots may be rejected for failing to comply with mandatory requirements of the absentee voting laws even in the absence of fraud. "Whether fraud has been committed in the handling of certain absentee ballots is irrelevant to the

question of whether there has been substantial compliance with all of the mandatory provisions of the absentee voting law. . . Had the legislature chosen to do so, it could have enacted a remedial scheme under which ballots would. . . be invalidated only upon a showing of fraud or other related irregularity. The legislature has instead enacted a regulatory scheme designed to prevent fraud as far as practicable by mandating the way in which absentee ballots are to be handled. The validity of the ballot, therefore, depends not on whether there has been fraud, but on whether there has been substantial compliance with the mandatory requirements." (Citations omitted.) *Keeley* v. *Ayala*, supra, 328 Conn. 411.

The city defendants also emphasize a comparison between § 9-150a (d) (1) and §9-140 (a) of the General Statutes, because the former statute expressly provides for the rejection of unsigned absentee ballots, whereas the latter does not expressly provide for the rejection of unsigned applications for absentee ballots. These defendants reason that this difference supports an inference that the legislature did not intend for ballots to be rejected because the applications for same are unsigned. The obvious error of this reasoning is that there are such distinct differences between counting of absentee ballots and applying for absentee ballots that differing procedures for the two are unsurprising and fail to provide any comparative insight on the legislative intent in the manner advanced by the city defendants. Moreover, for example, if an unsigned absentee ballot application were received by an election official, the absentee ballot should not be issued, and if the ballot were issued and returned under such circumstances, there is little question that legitimate arguments would be raised if it were counted. See *Lazar* v. *Ganim*, Superior Court, supra, pp. 14-15.

In summary, Brown and the city defendants make well-presented arguments as to why the

failure to comply with the signature requirement of § 9-140 should not result in disenfranchisement, but in light of the exigent nature of these proceedings, rather than explicitly addressing all their arguments, the court states the following. In order to accept the positions of Brown and the city defendants, the court would have to conclude that the signature requirement of § 9-140 (a) is a perfunctory or ministerial matter rather than a substantive and integral part of the statutory scheme governing the election process. According to the positions of Brown and the city defendants, the court should also disregard and find irrelevant the reasons for an elector's failure to sign an absentee ballot application, even if the application was signed without his knowledge or consent or if the application itself was forged. Additionally, the court would have to conclude that an absentee ballot should be accepted without any attestation from the elector himself that he is eligible to vote by an absentee ballot and without any consideration on whether the elector is actually eligible to cast an absentee ballot. Indeed, according to Brown and the city defendants, an elector's failure to comply with the signature mandate of § 9-140 should never be a reason for not counting the elector's absentee ballot and when counted should never be a basis for concluding that there has been a mistake in the count of the vote. The collective summary of these positions illustrates the extent of their unacceptability as matter of election law and policy.

Therefore, for these reasons, the court orders a new Democratic primary election for the office of State Representative for the 127th Assembly District.

Dated this 4th day October 2022.

STEVENS, S. J.